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To: <Secretary@fmc.gov>
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Subject: Comments in Docket No. 03-15

>>>> Please read the confidentiality statement below <<<<

Please find attached (in Microsoft Word and .pdf formats) the comments of Maersk Sealand to the notice of proposed rulemaking in Docket No. 03-I 5, Ocean Common Carrier And Marine Terminal Operator Agreements Subject To The Shipping Act Of 1984. If you have any questions please feel free to contact me. Thanks and regards,

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BEFORE THE FEDERAL MARITIME COMMISSION

Docket No. 03-15

OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

COMMENTS OF MAERSK SEALAND

Maersk Sealand welcomes the opportunity to submit its comments in response to the Notice of Proposed Rulemaking in this docket. Maersk Sealand fully supports the joint comments of the Ocean Common Carriers and Carrier Agreements tiled separately in this proceeding, and endorses all the recommendations contained therein. However, Maersk Sealand tiles these comments to further address one issue raised in the rulemaking, the proposed exemption from the 45-day waiting period for low market share agreements.

Maersk Sealand strongly supports the proposed elimination of the 45-day waiting period for space charters and other operational agreements, particularly in instances where the parties' combined market shares do not give rise to serious competitive concerns. Under the current Shipping Act and FMC rules, when carriers agree to charter or exchange space with other carriers, they must tile these agreements with the Commission, then wait 45 days before implementing their plans. Unfortunately, this mandated waiting period has the effect of delaying new service offerings and deployment changes, resulting in additional costs and operational obstacles for both carriers and shippers.

Over the last 20 years since the Shipping Act of 1984 was developed, the global logistics and container shipping industries have become far more sophisticated, dynamic and responsive, responding to the continuous growth of global trade and shippers' needs. While 45 days may have represented a reasonable waiting period for implementing operational arrangements in the 1980's (particularly compared to the interminable delays previously experienced under the Shipping Act, 1916), in the current market conditions carriers require more flexibility to efficiently manage assets and quickly respond to their customers' supply chain requirements.

The chartering and exchange of space is a critical part of carriers' network design strategies. Space chartering, slot swapping and vessel sharing are vitally important for:

- Securing additional space to offer a broader range of services, to meet rapidly changing shipper demands for capacity and service options;
- Allowing carriers to economically add additional vessels or new service strings to a particular trade;
- Enabling carriers to maintain quality service for shippers in a particular trade lane while redeploying tonnage to trades where vessel capacity is needed more critically;

- Allowing carriers to enter and offer new services in trades where it would not be economically viable to add new vessels.

As a result, delaying the effectiveness of space charters and similar arrangements for a number of weeks can compromise service by delaying vessel deployment changes and introduction of new services, undermine carriers' ability to meet particular shippers' urgent short-term demands for space and service, and reduce network efficiency. Ultimately, the result of these delays can be unnecessary costs for both shippers and carriers.

While we appreciate the frequent assistance and cooperation of the FMC staff in facilitating expedited approval for many agreement tilings, the current system for expedited review (under which carriers make a case-by-case for-cause requests to shorten the time period) is not an adequate solution. For example, under the current system, the FMC staff cannot determine in advance how much, if at all, the time period will be shortened, so planning in advance for the scheduling of vessel service changes is nearly impossible.

In our view, eliminating the 45-day waiting period for space charters and similar agreements would not undermine the Commission's regulatory oversight or effectiveness in any way. Unlike the analogous regulatory provisions the Commission cites', the proposed exemption does not relieve the subject agreements from the substantive requirements of the Shipping Act, or even exempt the agreements from filing with the Commission. If an operational agreement were to raise regulatory concerns, the Commission would still be free to take action immediately to contest or investigate the it. (Moreover, on a practical note, we would point out that after almost 20 years of reviewing agreements under the 1984 Act, such actions by the Commission against simple space charters have been exceedingly rare or nonexistent.) Accordingly, there appears to be no risk of harm that would come from eliminating the unnecessary 45-day delay and letting these arrangements go into effect promptly.

Indeed, as outlined more fully in the comments of the Ocean Common Carriers and Carrier Agreements, we believe the Commission should enhance the proposed exemption's usefulness by, ***inter*** *alia*, raising the market share thresholds. For the reasons cited above, eliminating the 45-day delay for operational agreements (which have neither rate authority nor capacity rationalization provisions) up to a 35% market share (or 30% when members of a rate agreement), will improve service, reduce costs, and benefit both shippers and carriers. Given the decades-long track record of these types of agreements as efficiency-enhancing and not anticompetitive, and the Commission's ongoing authority and oversight over such tiled agreements, we believe that eliminating the 45-day delay for such agreements would be a clear

[1] European Commission Regulation (EC) No 823/2000 of 19 April 2000, creating a complete block exemption for carrier consortia under 35% market share (or 30% in a conference), and U.S. Department of Justice Guidelines on Joint Ventures. We would also note the Hart-Scott-Rodino ("HSR") pre-merger notification rules, on which much of the 1984 Act's agreement review process was patterned. The Department of Justice and Federal Trade Commission have exempted a large percentage of transactions from HSR waiting and filing requirements based on the overall transaction size. As a result, in some instances it is possible for a carrier to acquire another entire small shipping line without imposition of a regulatory waiting period.

benefit for oceanbome trade. Eliminating this unnecessary source of operational delay would not be detrimental to commerce in any way, nor would it result in a substantial reduction in competition, in contravention of Section 16 of the Act.

Respectfully submitted,

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